

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - FLINT

GERALD E. SIMS, #192822

Plaintiff(s),

CASE NO.: 05-CV-72816-DT

vs.

HON. LAWRENCE P. ZATKOFF
MAG. JUDGE WALLACE CAPEL, JR.

JOANNE M. RICCI, et. al.,

Defendant(s).

ORDER DENYING PLAINTIFF'S
MOTION TO HOLD IN ABEYANCE PENDING
OUTCOME OF JUDICIAL REVIEW OF MAJOR MISCONDUCT

This matter is before the Court on the Plaintiff's "Response To Defendants' Motion For Dismissal And Motion To Hold Case In Abeyance Pending Outcome Of Judicial Review Of Major Misconduct," filed on December 2, 2005. In his motion, the Plaintiff is requesting that the Court hold his current civil action in abeyance pending a judicial review of the major misconduct charge which he filed with the Office of Policy and Hearings in February, 2005, and which his request for rehearing was denied by that Agency on October 6, 2005. Plaintiff further indicates that he did not have time to file a judicial review in a timely manner before the Defendants filed their motion for dismissal. Alternatively, the Plaintiff is requesting that the Court dismiss this action without prejudice in order that he can take the proper administrative steps and then re-file this action at a later date.

Having reviewed the motion, the Court is inclined not to grant this motion. The Plaintiff should have taken the proper steps by exhausting his administrative remedies prior to filing his

complaint in the federal court as required under the Prisoner Litigation Reform Act. Further, the Defendants have filed a motion for dismissal which is ready for decision in this case.

Accordingly, the Plaintiff's motion to hold case in abeyance is hereby **DENIED**.

IT IS SO HEREBY ORDERED.

The parties are hereby informed that any objection to this order must be filed with the district court within 10 days after service, pursuant to Rule 72(a), Federal Rules of Civil Procedure.

DATED: January 6, 2006

s/ Wallace Capel, Jr.
WALLACE CAPEL, JR.
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on **January 6, 2006**, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification of such filing to the following: Diane M. Smith, Esq., and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participant(s): Gerald Sims #192822, Alger Maximum Correctional Facility, P.O. Box 600, Munising, MI 49862

s/James P. Peltier
James P. Peltier
Courtroom Deputy Clerk
U.S. District Court
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